

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

HARRY KERSEY,

Plaintiff(s)

vs.

HARRY K. RUSSELL, Warden,

Defendant(s)

: Case Number: 1:02cv458-SJD

: District Judge Susan J. Dlott

JUDGMENT IN A CIVIL CASE

Decision by Court: This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

. . . that petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is DENIED with prejudice.

. . . that the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this order would not be taken in "good faith" and therefore DENIES petitioner leave to appeal *in forma pauperis*. See Fed. R. App. P. 24(a); *Kincade v Sparkman*, 117 F.3d 949, 952 (6<sup>th</sup> Cir. 1997).

. . . that a certificate of appealability shall not issue because, for the reasons stated in the Report and Recommendations, petitioner has failed to make a substantial showing of the denial of a constitutional right remediable in this federal habeas corpus proceeding. See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). Petitioner has not shown that reasonable jurists could debate whether these claims should have been resolved in a different manner or that the issues presented were "adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 323-24 (2003)(quoting *Slack v McDaniel*, 529 U.S. 473, 483-84 (2000))(in turn quoting *Barefoot v Estelle*, 463 U.S. 880, 893 n.4 (1983)).

1/28/05

JAMES BONINI, CLERK

s/Stephen Snyder  
Deputy Clerk

Pursuant to S. D. Ohio Civ. R. 79.2(a) and (b), all models, diagrams, depositions, photographs, x-rays and other exhibits and materials filed or offered in evidence shall be withdrawn by counsel without further Order within six (6) months after final termination of the action. All materials not withdrawn shall be disposed of by the Clerk as waste.